

Appl. No. 09/821,581
Amdt. Dated September 19, 2003
Reply to Office Action of May 20, 2003

•• REMARKS/ ARGUMENTS ••

The present Response to the Notice of Non-Compliant Amendment corrects the status identifier of claim 14 which is currently amended.

The Official Action of May 20, 2003 has been thoroughly studied. Accordingly, the changes presented herein for the application, considered together with the following remarks, are believed to be sufficient to place the application into condition for allowance.

By the present amendment, independent claim 1 has been changed to recite that the open frame provides a reinforcing structure that surrounds an outer upper portion of the blind-end frame when the filter is unfolded.

In a similar manner, independent claim 14 has been changed to recite that the open frame provides a reinforcing structure that surrounds an outer upper portion of the blind-end frame when the filter is expanded.

Support for these changes can be readily found in Figs. 2, 4, 6, *et seq.* and in the last sentence in the paragraph bridging pages 13 and 14 of applicant's specification.

Also by the present amendment, the dependencies of claims 27, 31 and 35 have been changed to address and overcome the antecedent basis problems noted by the Examiner.

Entry of the changes to the claims is respectfully requested.

Claims 1-35 remain pending in this application.

Appl. No. 09/821,581
Amdt. Dated September 19, 2003
Reply to Office Action of May 20, 2003

Claims 1-30 stand provisionally rejected under 35 U.S.C. §101 as claiming the same invention as that of claims 1-10 of copending Application Serial No. 10/021,847.

Applicant submits that the claims of the present application are not of the same scope as the claims of copending Application Serial No. 10/021,847.

A comparison of the independent claims of both applications is as follows:

<u>Present Application</u>	<u>Serial No. 10/021,847</u>
<u>Claim 1:</u> A filter device for coffee or the like comprising: a container body consisting of an open frame formed of sheet material having predetermined rigidity, and a blind-end frame, including an annular bottom member, being joined with said open frame so as to be foldable into said open frame, said blind-end frame being formed of sheet material having predetermined flexibility; and a filter chamber for enclosing substance to be extracted, being mounted with a filter on said annular bottom member, wherein said blind-end frame is	<u>Claim 1:</u> A filter device for coffee or the like comprising: an open frame in a short tubular shape; a blind-end frame in a short tubular shape having a larger diameter than said open frame, both said frames being formed of sheet material having predetermined rigidity; a <u>body part</u> in a tubular shape of truncated cone formed of sheet material having predetermined rigidity and flexibility which is deformable and has shape retaining ability, said open frame and said blind-end frame being arranged above and below, and integrally connected by way of said body part thereby to

Appl. No. 09/821,581
Amdt. Dated September 19, 2003
Reply to Office Action of May 20, 2003

foldable into said open frame together with said filter chamber and said open frame provides a reinforcing structure that surrounds an outer upper portion of the blind-end frame when the filter is unfolded.

Claim 14:

A filter device for coffee or the like which is constructed;

by forming an open frame in a short tubular shape of sheet material having predetermined rigidity,

by extending a body part of a blind-end frame extending downward from a lower edge of said open frame thereby to form a cup-shaped container body, said blind-end frame being formed of deformable sheet material provided with shape retaining characteristic having predetermined rigidity and flexibility; and

compose a container body substantially in a shape of truncated cone in its outer shape; and

a store room for enclosing substance to be extracted such as ground coffee or the like which is continuously provided in a bottom of said blind-end frame,

wherein while not in use, said body part is adapted to be invertibly folded and housed inside said blind-end frame together with said open frame by means of flexibility of said body part thereby to contract said container body, and while in use, said body part is expanded by pulling out of said open frame from said blind-end frame, whereby said container body is expanded and restored to an original cup-like shape.

Appl. No. 09/821,581
Amdt. Dated September 19, 2003
Reply to Office Action of May 20, 2003

by continuously forming a filter chamber for enclosing substance to be extracted such as ground coffee in a bottom of said blind-end frame via a filter,

wherein when it is not in use, said filter chamber is pushed into said open frame while said body part of said blind-end frame is flexed and deformed to fold and contract said blind-end frame, and when it is in use, said body part is flexed to expand said blind-end frame thereby enabling said container body to be expanded and restored to a cup-like shape, and said filter chamber to be pulled downward, said open frame providing a reinforcing structure that surrounds an outer upper portion of the blind-end frame when the filter is expanded.

From the above comparison the Examiner will note that the scope of these two claims is not the same at all.

Appl. No. 09/821,581
Amdt. Dated September 19, 2003
Reply to Office Action of May 20, 2003

Claim 1 of present application does not even recite the "body part" found in claim 1 of copending Application Serial No. 10/021,847. Copending Application Serial No. 10/021,847 does not have any claims directed to the construction of a filter device.

Other differences in the scope of the two claims can be seen above.

Based upon a comparison of the independent claims of the present application and copending Application Serial No. 10/021,847 it is submitted that the double patenting rejection under 35 U.S.C. §101 is improper and should be withdrawn.

Claims 27, 31 and 35 stand rejected under 35 U.S.C. §112, second paragraph. Under this rejection the Examiner has noted that the phrase "said reinforcing" lacked antecedent basis in claims 27, 31 and 35.

By the present amendment, the dependencies of claims 27, 31 and 35 have been changed to address and overcome the antecedent basis problems noted by the Examiner.

Claims 1-7, 11, 13-18, 24 and 32 stand rejected under 35 U.S.C. §102(b) as being clearly anticipated by Japanese reference No. 5-40843 (JP'843).

Claims 14-20, 24 and 28 stand rejected under 35 U.S.C. §102(b) as being clearly anticipated by U.S. Patent No. 4,867,993 to Nordskog.

Claims 12 and 28 stand rejected under 35 U.S.C. §103(a) as being unpatentable over JP'843 in view of Nordskog.

Claims 8-10, 21-23, 25-27 and 33-35 stand rejected under 35 U.S.C. §103(a) as being unpatentable over JP'843 in view of U.S. Patent No. 4,520,716 to Hayes.

Appl. No. 09/821,581
Amdt. Dated September 19, 2003
Reply to Office Action of May 20, 2003

Claims 29-31 stand rejected under 35 U.S.C. §103(a) as being unpatentable over JP'843 in view of Nordskog and further in view of Hayes.

Claims 1-7, 11 and 12 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Nordskog in view of JP'843.

Claims 21-23, 25-27 and 29-31 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Nordskog in view of Hayes.

Claims 8-10 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Nordskog in view of JP'843 and further in view of Hayes.

Claim 32 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Nordskog in view of U.S. Patent No. 6,103,116 to Koslow et al.

Claims 33-35 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Nordskog in view of Koslow and further in view of Hayes.

Claim 13 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Nordskog in view of JP'843 and further in view of Koslow et al.

For the reasons set forth below, it is submitted that all of the pending claims are allowable over the prior art of record and therefore, each of the outstanding prior art rejections of the claims should properly be withdrawn.

Favorable reconsideration by the Examiner is earnestly solicited.

JP'843 does not include an open frame that provides a reinforcing structure that surrounds an outer upper portion of the blind-end frame when the filter is unfolded.

Appl. No. 09/821,581
Amdt. Dated September 19, 2003
Reply to Office Action of May 20, 2003

In JP'843 when the coffee extractor is unfolded as shown in Fig. 2, there are no elements that correspond to both applicant's claimed blind-end frame and open frames which are configured so that the open frame surrounds an upper portion of the blind end frame and provides a reinforcing structure that surrounds the blind end frame.

It does not even appear from JP'843 that there is any need for additional reinforcement. This is perhaps because the extractor is molded of a synthetic resin and is otherwise configured so that additional reinforcement is not required.

Accordingly, JP'843 cannot be relied upon as anticipating applicant's claimed invention under 35 U.S.C. §102.

Nordskog, like JP'843, fails to teach an embodiment which includes elements that correspond to both of applicant's claimed blind-end frame and open frames and which are configured so that the open frame surrounds an upper portion of the blind end frame and provides a reinforcing structure that surrounds the blind end frame.

Accordingly, Nordskog cannot be relied upon as anticipating applicant's claimed invention under 35 U.S.C. §102.

Note that Nordskog teaches a brewing chamber that is provided with rims 38 that are "used to fit into standard guideways in a coffee or other similar hot beverage making machine."

Because Nordskog is designed to be suspended by rims 38, there is no reason or motivation to provide an additional supporting structure that surrounds an outer surface of an upper portion of the device. Accordingly, Nordskog does not even render applicant's claimed invention obvious.

Appl. No. 09/821,581
Amdt. Dated September 19, 2003
Reply to Office Action of May 20, 2003

Based upon the above, it follows that the combination of JP'843 and Nordskog does not render applicant's claimed invention obvious under 35 U.S.C. §103.

The Examiner has relied upon Hayes as teaching a "reinforcing frame forming a cup holder in a coffee maker filter."

The Examiner has relied upon Koslow et al. as teaching a non-woven fabric material for the filter material of a coffee filter.

Neither the Examiner's reliance upon Hayes or Koslow et al. addresses or overcome the deficiencies in the teachings of JP'843 or Nordskog.

Based upon the above distinctions between the prior art relied upon by the Examiner and the present invention, and the overall teachings of prior art, properly considered as a whole, it is respectfully submitted that the Examiner cannot rely upon the prior art as required under 35 U.S.C. §102 as anticipating applicant's claimed invention.

Moreover, the Examiner cannot properly rely upon the prior art under 35 U.S.C. §103 to establish a *prima facie* case of obviousness of applicants' claimed invention.

It is, therefore, submitted that any reliance upon prior art would be improper inasmuch as the prior art does not remotely anticipate, teach, suggest or render obvious the present invention.

It is submitted that the claims, as now amended, and the discussion contained herein clearly show that the claimed invention is novel and neither anticipated nor obvious over the teachings of the prior art and the outstanding rejections of the claims should hence be withdrawn.

Appl. No. 09/821,581
Amdt. Dated September 19, 2003
Reply to Office Action of May 20, 2003

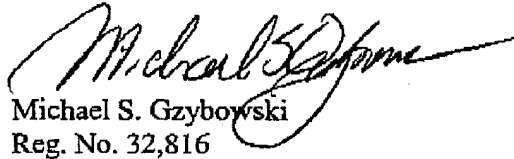
Therefore, reconsideration and withdrawal of the outstanding rejections of the claims and an early allowance of the claims is believed to be in order.

It is believed that the above represents a complete response to the Official Action and reconsideration is requested.

If upon consideration of the above, the Examiner should feel that there remain outstanding issues in the present application that could be resolved, the Examiner is invited to contact applicant's patent counsel at the telephone number given below to discuss such issues.

To the extent necessary, a petition for an extension of time under 37 CFR §1.136 is hereby made. Please charge the fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 12-2136 and please credit any excess fees to such deposit account.

Respectfully submitted,


Michael S. Gzybowski
Reg. No. 32,816

BUTZEL LONG
350 South Main Street
Suite 300
Ann Arbor, Michigan 48104
(734) 995-3110

OFFICIAL

RECEIVED
CENTRAL FAX CENTER
SEP 22 2003